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STATUTORY INSTRUMENTS

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**2010 No. 2184**

**The Town and Country Planning (Development Management Procedure) (England) Order 2010**

**PART 6**

Miscellaneous

**Local development orders**

**34.**—(1) Where a local planning authority propose to make a local development order they shall first prepare—

- (a) a draft of the order; and
- (b) a statement of their reasons for making the order.

(2) The statement of reasons shall contain—

- (a) a description of the development which the order would permit; and
- (b) a plan or statement identifying the land to which the order would relate.

(3) Where a local planning authority have prepared a draft local development order, they shall consult, in accordance with paragraph (5), such of the following persons whose interests they consider would be affected by the order if made—

- (a) if the local planning authority is a London borough council, the Mayor of London;
- (b) a local planning authority, county council or parish council any part of whose area is in or adjoins the area of the local planning authority;
- (c) Natural England<sup>(1)</sup>;
- (d) the Environment Agency<sup>(2)</sup>;
- (e) the Historic Buildings and Monuments Commission for England<sup>(3)</sup>;
- (f) the Secretary of State for Transport;
- (g) the Highways Agency;
- (h) a regional development agency<sup>(4)</sup> whose area is in or adjoins the area of the local planning authority;
- (i) any person—
  - (i) to whom the electronic communications code applies by virtue of a direction given under section 106(3)(a) of the Communications Act 2003 (application of the electronic communications code)<sup>(5)</sup>; and

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<sup>(1)</sup> See section 1 of the Natural Environment and Rural Communities Act 2006 (c. 16).

<sup>(2)</sup> See section 1(1) of the Environment Act 1995 (c. 25).

<sup>(3)</sup> See section 32 of the National Heritage Act 1983 (c. 47). This body is also known as English Heritage.

<sup>(4)</sup> See section 1 of the Regional Development Agencies Act 1998 (c. 45).

<sup>(5)</sup> 2003 c. 21.

- (ii) who owns or controls electronic communications apparatus situated in any part of the area of the local planning authority;
  - (j) any of the following persons who exercise functions in any part of the area of the local planning authority—
    - (i) a Primary Care Trust<sup>(6)</sup>;
    - (ii) a person to whom a licence has been granted under section 6(1)(b) and (c) of the Electricity Act 1989 (licences authorising supply, etc)<sup>(7)</sup>;
    - (iii) a person to whom a licence has been granted under section 7(2) of the Gas Act 1986 (licensing of gas transporters)<sup>(8)</sup>;
    - (iv) a sewerage undertaker;
    - (v) a water undertaker;
  - (k) voluntary bodies some or all of whose activities benefit any part of the local planning authority's area;
  - (l) bodies which represent the interests of different racial, ethnic or national groups in the local planning authority's area;
  - (m) bodies which represent the interests of different religious groups in the local planning authority's area;
  - (n) bodies which represent the interests of disabled persons in the local planning authority's area;
  - (o) bodies which represent the interests of persons carrying on business in the local planning authority's area.
- (4) The local planning authority shall also consult any person with whom they would have been required to consult on an application for planning permission for the development proposed to be permitted by the order.
- (5) In consulting in accordance with paragraphs (3) and (4) the local planning authority shall—
- (a) send a copy of the draft order and the statement of reasons to the consultees;
  - (b) specify a consultation period of not less than 28 days; and
  - (c) take account of all representations received by them during the period specified.
- (6) A local planning authority shall, during any consultation under paragraphs (3) and (4)—
- (a) make a copy of the draft local development order and statement of reasons available for inspection—
    - (i) at their principal office during normal working hours; and
    - (ii) at such other places within their area as they consider appropriate;
  - (b) publish on their website—
    - (i) the draft local development order and the statement of reasons;
    - (ii) a statement that those documents are available for inspection and the places where and times when they can be inspected; and

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<sup>(6)</sup> See section 18 of the National Health Service Act 2006 (c. 41).

<sup>(7)</sup> 1989 c. 29; section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27), subsection (1)(b) was substituted by section 136(1) of the Energy Act 2004 (c. 20) and subsection (1)(c) was amended by section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004.

<sup>(8)</sup> 1986 c. 44; section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and subsection (2) was amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Part I of Schedule 6 to, the Utilities Act 2000.

- (iii) the date by which representations on the draft local development order must be received, which shall be not less than 28 days after the date of first publication on the website; and
- (c) give notice by local advertisement of—
  - (i) the draft local development order and the statement of reasons;
  - (ii) the availability of those documents for inspection, and the places where and times when they can be inspected; and
  - (iii) the date by which representations on the draft local development order must be received, which shall be not less than 28 days from the date on which the notice was first published.
- (7) Where the draft local development order would grant planning permission for development specified in the order, the local planning authority shall also give notice of their proposal to make the order—
  - (a) by displaying in at least one place on or near to the site to which the order relates a notice in the appropriate form set out in Schedule 7 or in a form substantially to the like effect, and, subject to paragraph (8), leaving the notice in position for a period of not less than 28 days beginning with the date on which it is first displayed; and
  - (b) by serving a copy of that notice on every person whom the authority knows to be the owner or tenant of any part of the site whose name and address is known to the authority,and specifying in the notice a date by which representations on the draft local development order must be received, which shall be not less than 28 days from the date on which the notice was displayed or served, as the case may be.
- (8) Where the notice referred to in paragraph (7)(a) is, without any fault or intention of the authority, removed, obscured or defaced before the period referred to in that paragraph has elapsed, the authority shall be treated as having complied with the requirements of that paragraph if they have taken reasonable steps for the protection of the notice, and, if necessary, its replacement.
- (9) Where any notice of the proposal has been—
  - (a) published on the authority's website or by local advertisement in accordance with paragraph (6);
  - (b) given by site display under paragraph (7)(a); or
  - (c) served on an owner of the land or a tenant under paragraph (7)(b),a local planning authority shall, in considering what modifications should be made to the draft local development order or whether such an order should be adopted, take into account any representations made in relation to that order and received by the authority by the date specified on the website or in the notices, in accordance with paragraph (6) or (7) as the case may be, as the date by which representations should be made (or, if the dates on the website or in the notices differ from each other, the latest of such dates).
- (10) A local planning authority shall send a copy of a draft local development order and the statement of reasons relating to that order, including any modifications made to the order or statement, to the Secretary of State at any time after they have complied with the requirements of paragraph (9).
- (11) Subject to paragraph (12), a local planning authority shall not take any further step in connection with the adoption of a local development order until either—

- (a) the Secretary of State has notified the authority in writing that the Secretary of State does not intend to make a direction under section 61B(1) of the 1990 Act (intervention by Secretary of State)(9); or
  - (b) a period of 21 days has elapsed from the date on which the draft was sent to the Secretary of State, and the Secretary of State has neither notified the authority that the Secretary of State—
    - (i) intends to make such a direction; or
    - (ii) requires more time to reach a decision.
- (12) If, within the period of 21 days referred to in paragraph (11)(b), the Secretary of State has notified the authority that the Secretary of State requires more time to reach a decision, the authority shall not take any further step in connection with the adoption of the order unless the Secretary of State notifies the authority as referred to in paragraph (11)(a).
- (13) A local development order must not be made so as to grant planning permission—
- (a) for development affecting a listed building; or
  - (b) for development which is Schedule 1 development within the meaning of regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (interpretation)(10).
- (14) Where a local planning authority revoke a local development order the authority shall—
- (a) publish on their website a statement that the local development order has been revoked;
  - (b) give notice of the revocation by local advertisement; and
  - (c) give written notice of the revocation to every person whom the local planning authority consulted under paragraphs (3) or (4) before the making of the order.
- (15) In this article a requirement to give notice by local advertisement is a requirement to publish the notice in as many newspapers as will secure that the press coverage (taken as a whole) extends to the whole of the area to which the local development order relates.

### **Certificate of lawful use or development**

**35.—**(1) An application for a certificate under section 191(1) or 192(1) of the 1990 Act (certificates of lawfulness of existing or proposed use or development)(11) shall be made on a form published by the Secretary of State (or a form substantially to the like effect) and shall, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the particulars specified or referred to in the form.

- (2) An application to which paragraph (1) applies shall be accompanied by—
  - (a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;
  - (b) such evidence verifying the information included in the application as the applicant can provide; and
  - (c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.
- (3) Where an application for a certificate under section 192(1) of the 1990 Act is made in respect of Crown land, it shall, in addition to the documents required by paragraph (2), be accompanied by—
  - (a) a statement that the application is made in respect of Crown land; and

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(9) Section 61B was inserted by section 40(1) of the 2004 Act.

(10) S.I. 1999/293, to which there are amendments not relevant to this article.

(11) Sections 191 and 192 were substituted by section 10(1) of the Planning and Compensation Act 1991 (c. 34).

- (b) where the application is made by a person authorised in writing by the appropriate authority, a copy of that authorisation.
- (4) Where such an application specifies 2 or more uses, operations or other matters, the plan which accompanies the application shall indicate to which part of the land each such use, operation or matter relates.
- (5) Where an application is made using electronic communications to transmit a form to the local planning authority, the applicant shall be taken to have agreed—
  - (a) to the use of such communications by the local planning authority for the purposes of the application;
  - (b) that the applicant's address for those purposes is the address incorporated into, or otherwise logically associated with, the application; and
  - (c) that the applicant's deemed agreement under this paragraph shall subsist until notice is given in writing of the withdrawal of the applicant's consent to the use of electronic communications under article 40.
- (6) Articles 10(1) and 29(6) shall apply to an application for a certificate to which paragraph (1) applies as they apply to an application for planning permission.
- (7) When the local planning authority receive an application which complies with the requirements of paragraphs (1) to (4) and any fee required to be paid with respect to the application, they shall, as soon as reasonably practicable, send to the applicant an acknowledgement of the application in the terms (or substantially in the terms) set out in Schedule 1.
- (8) Where, after sending an acknowledgement as required by paragraph (7), the local planning authority consider that the application is invalid they shall, as soon as reasonably practicable, notify the applicant that the application is invalid.
- (9) The local planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable them to deal with the application.
- (10) Where a valid application has been received, the local planning authority shall give the applicant written notice of their decision within—
  - (a) the period of 8 weeks beginning with the day immediately following that on which the application is received; or
  - (b) unless the applicant has already given notice of appeal to the Secretary of State, within such extended period as may be agreed in writing between the applicant and the authority.
- (11) Where a fee due in respect of an application has been paid by a cheque which is subsequently dishonoured—
  - (a) sub-paragraph (a) of paragraph (10) shall have effect as if, for “the application is received”, there were substituted “the authority are satisfied that they have received the full amount of the fee”; and
  - (b) sub-paragraph (b) of that paragraph shall have effect as if, at the end, there were added “once the authority are satisfied that they have received the full amount of the fee”.
- (12) In this article, “valid application” means an application which—
  - (a) complies with the requirements of paragraphs (1) to (4); and
  - (b) is accompanied by the appropriate fee,and a valid application shall be taken to have been received when the application and all of the documents, particulars or evidence referred to in paragraphs (1) to (4) have been lodged with the appropriate authority mentioned in article 10(1) and the fee has been paid.
- (13) Where an application is refused, in whole or in part (including a case in which the authority modify the description of the use, operations or other matter in the application or substitute an

alternative description for that description), the notice of decision shall state clearly and precisely the authority's full reasons for their decision and shall include a statement to the effect that if the applicant is aggrieved by the decision the applicant may appeal to the Secretary of State under section 195 of the 1990 Act (appeals against refusal or failure to give decision on application)(12).

(14) A certificate under section 191 or 192 of the 1990 Act shall be in the form set out in Schedule 8, or in a form substantially to the like effect.

(15) Where a local planning authority propose to revoke a certificate issued under section 191 or 192 of the 1990 Act in accordance with section 193(7) of the 1990 Act (certificates under sections 191 and 192: supplementary provisions)(13), they shall, before they revoke the certificate, give notice of that proposal to—

- (a) the owner of the land affected;
- (b) the occupier of the land affected;
- (c) any other person who will in their opinion be affected by the revocation; and
- (d) in the case of a certificate issued by the Secretary of State under section 195 of the 1990 Act, the Secretary of State.

(16) A notice issued under paragraph (15) shall invite the person on whom the notice is served to make representations on the proposal to the authority within 14 days of service of the notice and the authority shall not revoke the certificate until all such periods allowed for making representations have expired.

(17) An authority shall give written notice of any revocation under section 193(7) of the 1990 Act to every person on whom notice of the proposed revocation was served under paragraph (15).

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(12) Section 195 was amended by paragraph 32 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34) and paragraphs 1 and 3 of Schedule 11 to the Planning Act 2008 (c. 29) and is to be amended by paragraphs 1 and 7 of Schedule 10 to the Planning Act 2008 on a date to be appointed.

(13) Section 193 was substituted by section 10(1) of the Planning and Compensation Act 1991.